

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 09-43(CH)

March 16, 2009

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: The Pilot Video Testimony Program in Representation
Cases Mid-Term Report

Memorandum OM 08-20 announced that the Board had authorized the General Counsel to implement a two-year Pilot Video Testimony Program in Representation Cases. Recently, the Division of Operations-Management surveyed the Regional Offices to assess the use of video testimony mid-way through the pilot program. Below are the overview of the program to date and suggestions for expanded use of video testimony.

The Regions' survey responses reveal that offices experienced no problems when taking video testimony. Those Regions with video testimony experience state that its use can be very helpful in controlled situations. However, the responses confirm that few offices have utilized video testimony to obtain evidence.

Presently, the pilot is limited to the use of videoconferencing equipment to take testimony in pre- and post-election representation cases. Several survey responses suggest that video testimony has not often been utilized because there have been few representation cases going to hearing and because, in those circumstances where an R-case hearing is necessary, the witnesses are available to testify in the hearing room. Many Regions state that their stakeholders were not inquiring about the use of video testimony and some Regions had not regularly informed their stakeholders about the pilot program. Regions are encouraged to notify their stakeholders of the availability of video testimony in those circumstances where it could facilitate the full and prompt completion of the record.

While survey responses regarding the use of videoconference equipment in representation case hearings were sparse, one Region reported that it had used videoconference equipment to secure unfair labor practice evidence from a witness located out of state. The Region's experience was positive and contributed to a thorough and complete unfair labor practice investigation. This Region's experience suggests the utility of expanding the pilot program to include the use of videoconference equipment to secure evidence in unfair labor practice investigations. Employing this technology in unfair labor practice case processing provides the Regions with an

additional investigation tool and, in limited circumstances, could enhance and expedite our investigations. However, it would not be appropriate to use this alternative technology where case processing requires the taking of face-to-face affidavits.

Questions regarding the procurement of remote videoconferencing sites to utilize for videoconference testimony or interviews should be directed to your Assistant General Counsel or Deputy.

Finally, Regions are reminded to complete the e-Room database survey for video testimony taken in an unfair labor practice case investigation as well as a representation case hearing.

If you have any questions regarding this memorandum, please contact Deputy Assistant General Counsel Yvette C. Hatfield.

/s/
R.A.S.

cc: NLRBU

Release to the Public

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